

THE HONORABLE SHARON L. GLEASON

Suzanne L. Elliott
Law Office of Suzanne Lee Elliott
1300 Hoge Building
705 Second Avenue
Seattle, WA 98104-1705
(206) 623-0291
suzanne-elliott@msn.com

Mark A. Larrañaga,
140 Lakeside Ave., Suite A - #338
Seattle, WA 98104
(206) 972-0151
Mark@jamlegal.com

Theresa M. Duncan
Duncan Earnest, LLC
222 East Marcy Street
Suite 1
Santa Fe, NM 87501
505-710-6586
teri@duncanearnest.com

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN PEARL SMITH, II,

Defendant.

No. CR16-0086-SLG-DMS

**DEFENSE INFORMATIONAL NOTICE FOR STATUS HEARING
SCHEDULED FOR JULY 1, 2021**

DEFENSE NOTICE OF INFORMATION
FOR STATUS HEARING SCHEDULED
FOR JULY 1, 2021- 1

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U.S. V. SMITH, NO. 3:16-CR-0086-SLG-DMS

1 On June 17, 2021, the United States of America filed a Motion to Withdraw the
2 Notice of Intent to Seek a Sentence of Death in this matter, which this Court granted.¹
3 The Court set a telephonic status hearing for July 1, 2021, at 9:00 a.m. (Alaska time).²
4 The Defense provides this informational notice in advance of the status conference
5 regarding issues related to scheduling for this non-capital case trial.

6 Trial Length and Date.

7
8 The Government expects the trial length, including jury selection, to last two to
9 three weeks. Under the Fourth Amended Scheduling Order, the capital trial was to
10 begin on October 18, 2021, and was expected to last to late December 2021. Although
11 there was some suggestion in a prior order that jury selection would still take place on
12 September 13, 2021, the parties jointly submit that jury selection should be in accord
13 with traditional, pre-pandemic practice of summoning jurors on the day trial is to
14 begin.³

15 The Defense suggests that the Court set the non-capital trial within the window
16 of time held for the case when it was capital: requesting the trial to begin November 29,
17 2021. The Government does not agree with this request.

18 There are a number of reasons for this requested schedule. First, we expect
19 some changes in the make-up of the defense team, consistent with our understanding of
20

21
22
23 ¹ Docket 1086 (Notice to Withdraw), Docket 1087 (Text Order Granting Dkt. 1086).

24 ² Docket 1089 (Text Order).

25 ³ Picking juror a month before trial runs the risk of losing jurors in the intervening month.

1 the general practice in the District. The Defense requests the Court address the number
2 of defense attorneys and rates *ex parte*. With that said, one of the defense attorneys,
3 Suzanne Lee Elliott, will shift to a more limited role because she was hired by the
4 Washington Appellate Project (WAP), with a start date set for the completion of this
5 case. At the time she was hired, that was expected to be early 2020. Due to the
6 pandemic, the trial was re-scheduled to 2021, and Ms. Elliott adjusted her fulltime start
7 date. In expectation of the need to reduce staffing levels on the case now, and because
8 Ms. Elliott's new position will allow her to continue on this matter in a limited role
9 (maintaining client contact and assisting with legal research and writing as needed), we
10 note that the remaining counsel will need to adjust and absorb her trial assignments.
11

12 Second, Attorney Mark Larrañaga is currently scheduled to begin a re-trial of a
13 Washington state murder case in mid-September. The original trial, which Mr.
14 Larrañaga tried in 2010, took ten (10) weeks. The conviction was subsequently reversed
15 on appeal and remanded for a new trial. It has always been the defense's position that
16 the defendant was wrongfully charged and convicted – a position that has only
17 strengthened with evidence and interviews obtained since the first trial. Consequently,
18 the defendant has been in-custody for over ten years for a crime he didn't commit. Mr.
19 Larrañaga has remained involved in the case, including arguing before the Washington
20 Court of Appeals and Washington State Supreme Court, since the first trial a decade
21 ago. All parties anticipate the remand trial will take the same number of weeks,
22 finishing mid-November.
23
24
25

1 If the Court sets the trial in this case to begin November 29, 2021, the Defense proposes
2 the following case schedule:

3	July 19, 2021	Parties to produce remaining <i>Jencks</i> material pursuant to
4		18 U.S.C. § 3500; Fed. R. Crim. P. 26.2. ⁴
5	September 1, 2021	Deadline for parties to provide the Court with a joint
6		witness list for trial. ⁵
7	September 8, 2021	Government Fed. R. Ev. (FRE) 404(b) Notice.
8		Government to file ex parte any previously undisclosed
9		18 U.S.C. § 3432 witness information along with
10		arguments addressing why any information should not be
11		furnished to the defense.
12	October 21, 2021	All pretrial motions, including discovery motions,
13		<i>Daubert</i> motions, and motions in limine.
14	October 27, 2021	Exhibit lists filed with the Court
15	November 3, 2021	Trial briefs, jury instructions, verdict forms, and requested
16		voir dire filed and provided to the Court.
17	November 22, 2021	Final pretrial conference: Defense provided with all
18		remaining 18 U.S.C. §3432 material.
19	November 29, 2021	Jury selection / trial begins

20 Mr. Smith is currently incarcerated at Federal Detention Center (FDC) in
21 SeaTac, Washington. He does not have counsel in the Anchorage, Alaska, area. In
22 order to confer with counsel and prepare for trial, Defense respectfully requests Mr.

23 ⁴ Docket 935, pg. 3. Since the matter is no longer capital, there are many deadlines
24 (*i.e.*, related to Rule 12.2(b)(2)) of the Fourth Amended Scheduling Order that are moot.
25 *See e.g.*, Docket 935, pg. 3 – 5.

⁵ We note that due to the pandemic, much of the witness interviewing necessary to
prepare for the defense case had to be postponed and is only now re-starting in full. We
anticipate needing the approximately six weeks between receiving *Jencks* and
submitting a witness list to contact (or re-locate) and interview guilt-innocence related
witnesses.

1 Smith remain at FDC as long as possible, and not be transported to Anchorage, Alaska,
2 until one week before any trial date set by the Court.

3
4 /s/Suzanne Lee Elliott
5 Law Office of Suzanne Lee Elliott
6 1300 Hoge Building
7 705 Second Avenue
8 Seattle, Washington 98104
9 Phone (206) 623-0291
10 Fax (206) 623-2186
11 Email: Suzanne-elliott@msn.com

12 /s/ Theresa Duncan
13 Duncan Earnest, LLC
14 222 East Marcy Street, Suite 1
15 Santa Fe, NM 87501
16 505-710-6586
17 teri@duncanearnest.com

18 /s/ Mark A. Larrañaga
19 Mark A. Larrañaga,
20 Walsh & Larrañaga
21 140 Lakeside Ave., Suite A-388
22 Seattle, WA 98122
23 Phone: 206-972-0151
24 Mark@jamlegal.com

25 Attorneys for Mr. Smith

18 Certificate of Service:

19 I hereby certify that I electronically filed the
20 foregoing, and any attachments, with the
21 Clerk of court for the U.S. District Court for
22 the District of Alaska by using the district's
23 CM/ECF system on June 30, 2021. All
24 participants in this case are registered
25 CM/ECF users and will be served by the
district's CM/ECF system.